

REMARKS

Applicant appreciates the Examiner's attention to this application.

The Office Action objects to the specification because there is no Brief Summary of the Invention. The Office Action objects to claims 2-7, 9-10, 12-17, and 19-21 due to alleged informalities. The Office Action rejects claims 8-17 under 35 U.S.C. § 101 as being directed to unpatentable subject matter. The Office Action rejects claims 1-3 and 18-19 under 35 U.S.C. § 102(a) as being anticipated by European patent application no. 02354066.9 to Paul Neuman et al. (hereinafter "Neuman"). The Office Action rejects claims 4 and 20 as being unpatentable over Neuman in view of U.S. patent no. 6,823,451 to Dale E. Gulick et al. (hereinafter "Gulik"). The Office Action indicates that claims 5-7 and 21 would be allowable if rewritten into independent form.

The Office Action also indicates that "should claims 8-17 be amended to overcome the rejection under 35 U.S.C. § 101, the prior art used in the rejections of the other claims might be used to reject the subject matter in the amended claims" (emphasis added).

This response is being filed with a Declaration to swear behind Neuman. This response also amends claims 8, 11, and 13, and this response traverses some or all of the objections and rejections.

The Objection to the Specification:

The Office Action objects to the specification because there is no Brief Summary of the Invention. However, the Office Action does not cite any statute or rule to support the proposition that a Brief Summary of the Invention is required. This is not surprising, since there is no legal requirement for a Brief Summary of the Invention.

Perhaps the most relevant rule is 37 CFR § 1.73. This rule indicates that, if a Brief Summary of the Invention (hereinafter "Summary") is provided, it "should precede the detailed description." This rule uses the permissive or suggestive verbal auxiliary "should," rather than the imperative "must." (Cf. 37 CFR § 1.71(a):

“The specification must include a written description of the invention.” (Emphasis added.)) Furthermore, 37 CFR § 1.73 clearly indicates that the Summary is optional, in that the rule includes the following text: “Such summary should, when set forth, be commensurate with the invention.” (Emphasis added.) Thus, the rule clearly anticipates that a Summary need not always be “set forth” or included. For at least the foregoing reasons, the objection to the specification should be withdrawn.

The Alleged Informalities in Certain Claims:

The Office Action objects to claims 2-7, 9-10, 12-17, and 19-21 due to alleged informalities. Specifically, the Office Action asserts that those claims must start with the article “the” instead of the article “a.” Applicant traverses this objection.

The Office Action cites no legal authority to support this objection. Applicant therefore cannot determine why the Office Action deems such changes necessary. If the Patent Office wishes to issue a non-final Office Action, to state the legal authority under which this objection is made, and to explain how that authority applies to the present claims, Applicant could then address the objection in a meaningful manner.

The Rejections under 35 U.S.C. § 101:

The Office Action rejects claims 8-17 under 35 U.S.C. § 101 as being directed to unpatentable subject matter. Specifically, the Office Action asserts that those claims involve a machine-accessible medium that is described in the specification as including allegedly “non-statutory transmission and communication media.” However, the Office Action does not explain which types of “transmission and communication media” are considered to be non-statutory, and does not explain why those types (if any) are non-statutory. The Office Action therefore does not meet the objective, as set forth in Section 706 of the Manual of Patent Examining Procedure (MPEP), “to clearly articulate any rejection early in the prosecution process so that the applicant has the opportunity to provide evidence of patentability and otherwise reply completely at the earliest opportunity.”

The rejections under Section 101 might pertain to some concern over whether or not the claims recite a tangible invention. In an attempt to avoid further delay, Applicant will presume that that is the case. In order to relieve any such concern, the response amends claims 8, 11, and 13 to recite a “tangible, machine-accessible medium” (emphasis added). Claims 9-10, 12, and 14-17 depend from claims 8, 11, and 13, respectively, and therefore implicitly include the features of their parent claims. For at least the foregoing reasons, the rejections under 35 USC § 101 should be withdrawn.

The Rejections under 35 U.S.C. § 102(a):

The Office Action rejects claims 1-3 and 18-19 under 35 U.S.C. § 102(a) as being anticipated by Neuman. Under Section 102(a), Applicant is entitled to a patent unless “the invention was ... described in a printed publication in ... a foreign country, before the invention thereof” by Applicant. The publication date of Neuman was October 29, 2003 (hereinafter the Reference Date”).

The present invention was conceived before that Reference Date and thereafter filed as a patent application with due diligence. Accompanying this response are a Declaration and associated evidence which provide additional facts concerning the date of conception and due diligence. Accordingly, the invention was not described in a printed publication in a foreign country, before the invention thereof by Applicant. For at least the foregoing reasons, the rejections under 35 U.S.C. § 102(a) should be withdrawn.

The Rejections under 35 U.S.C. § 103(a):

The Office Action rejects claims 4 and 20 as being unpatentable over Neuman in view of U.S. patent no. 6,823,451 to Dale E. Gulick et al. (hereinafter “Gulik”). However, as indicated above, Neuman does not constitute prior art, in light of the Declaration that accompanies this response. For at least the foregoing reason, the rejections under 35 USC § 103(a) should be withdrawn.

CONCLUSION

For all of the foregoing reasons, reconsideration of the present application is respectfully requested.

If the Examiner has any questions, the Examiner is invited to contact the undersigned at (512) 732-3927.

Respectfully submitted,

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